

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated.

Rulemaking 01-09-001  
(Filed September 6, 2001)

Order Instituting Investigation on the Commission's Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated.

Investigation 01-09-002  
(Filed September 6, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING THE RECOMMENDATIONS MADE BY  
THE OFFICE OF RATEPAYER ADVOCATES IN ITS COMMENTS  
ON THE COMPLIANCE FILING SUBMITTED BY SBC CALIFORNIA IN  
RESPONSE TO ORDERING PARAGRAPHS 2, 3, AND 5  
OF DECISION 04-02-063**

On March 29, 2004, SBC California (SBC) submitted a compliance filing pursuant to Ordering Paragraphs (OPs) 2, 3, and 5 of Decision (D.) 04-02-063. The Office of Ratepayer Advocates (ORA) and SBC submitted timely comments and reply comments, respectively, on SBC's compliance filing pursuant to OP 4 of D.04-02-063. This ruling resolves the issues raised by ORA in its comments.

**Issue 1: Calculation of Commercial Paper Interest**

OPs 2 and 5 of D.04-02-063 state as follows:

2. Within 30 days from the effective date of this Order, [SBC] shall return to its Voluntary Employee Benefit Association Trust No. 1 (VEBA 1) all funds that it has withdrawn from the VEBA 1 trust

in 1999 and subsequent years for purposes other than providing post-retirement benefits other than pensions (PBOPs) to [SBC] retirees, plus interest on the withdrawn funds equal to the higher of (i) the 3-month commercial paper rate, or (ii) the interest that would have earned had the funds remained in the VEBA 1 trust.

5. [SBC] shall return to its PBOP trust funds all amounts withdrawn for non-PBOP purposes in 2000 and subsequent years. [SBC] shall return the funds in accordance with the timeframe and procedures adopted by today's Order for returning the VEBA 1.

SBC is required by OP 2 to pay interest on the funds it withdrew from the VEBA 1 trust at the higher of (i) the 3-month commercial paper (CP) rate, or (ii) the amount that would have been earned had the funds stayed in the VEBA 1 trust. The CP rate is an "annual" interest rate that is computed using a 360-day year. For example, SBC's compliance filing states that the CP rate in January 2000 was 5.81%. The CP rate of 5.81% is an "annual" rate.

SBC calculated interest on a monthly basis. To determine the amount of monthly interest, SBC divided the "annual" CP rate by 365 days and multiplied the quotient by the number of days in the month. For example, in January 2000 SBC divided the CP rate of 5.81% by 365 days and multiplied the quotient by 31 days. ORA believes the correct divisor is 360 days, not 365 days. ORA states that the additional interest owed by SBC using the correct divisor is \$438,496.

SBC responds that its interest calculation was reasonable and consistent with D.04-02-063, but also acknowledges that "ORA's approach is not unreasonable." In order to avoid further controversy, SBC states that it made an additional contribution of \$438,497 to the VEBA 1 trust on April 28, 2004.

This ruling finds that SBC did not properly calculate the interest it owes to the VEBA 1 trust. ORA is to be commended for its careful scrutiny of SBC's compliance filing. It is disappointing that SBC would not acknowledge its error.

At the same time, SBC is to be commended for resolving this issue without further controversy by contributing an additional \$438,497 to the VEBA 1 trust.

**Issue 2: The Appropriate Rate of Interest**

SBC is required by OP 2 to pay interest on the funds it withdrew from the VEBA 1 at the higher of (i) the CP rate, or (ii) the interest that would have been earned had the funds remained in the VEBA 1 trust. ORA claims that OP 2 does not specify whether the “higher of” comparison should be made collectively for all months or separately for each individual month. ORA asks the Commission to clarify this point. ORA notes that SBC made the “higher of” comparison for all months, not separately for each month. ORA states that if the “higher of” requirement is applied monthly, the amount of interest owed by SBC would increase by more than \$150 million.

SBC responds that D.04-02-063 required the “higher of” comparison to be performed for all months and that it properly performed the comparison in its compliance filing. SBC adds that when the “higher of” comparison is performed for all months, the CP rates produces a positive return of \$27 million compared to a negative return of \$29 million that would have been earned had the withdrawn funds remained in the VEBA 1 trust.

This ruling finds that SBC has properly performed the “higher of” comparison. OP 2 required SBC to perform the “higher of” comparison assuming “the funds remained in the VEBA 1 trust.” The obvious intent of OP 2 is that the “higher of” comparison should be based on the assumption that the funds remained in the VEBA 1 trust during the entire period in question.

**Issue 3: Need for Additional Documentation**

SBC's compliance filing states that it contributed \$232,118,090 to its VEBA 1 trust on March 25, 2004. ORA states that there is no documentation in the compliance filing which verifies that SBC actually contributed \$232,118,090 to its VEBA 1 trust. ORA recommends that SBC be required to provide such verification. ORA also recommends that the SBC be required to (1) submit a supplemental compliance report that describes its accounting for the contribution, and (2) disclose this accounting in any future IEMR filings that involve calendar year 2004.

SBC responds that ORA's recommendations should be rejected because they are unnecessary and go beyond the requirements of D.04-02-063. ORA's recommendations are also improper, according to SBC, because they amount to a request that the Commission modify the requirements of D.04-02-063.

This ruling declines to adopt ORA's recommendations. The contents of SBC's compliance filing were specified in OP 3, which states as follows:

3. Within 30 days from the effective date of this Order, [SBC] shall file and serve a compliance report that contains the following information:
  - i. The rate and amount of interest on the funds returned to the VEBA 1 trust in accordance with the previous Ordering Paragraph
  - ii. Work papers showing the derivation of the rate of interest and the amount of interest.
  - iii. Whether, and to what extent, [SBC] withdrew funds from its PBOP trusts in 2000 and subsequent years for non-PBOP purposes.

The scope of this ruling is limited to whether SBC has complied with the requirements of D.04-02-063. ORA's recommendations go beyond the requirements of OP 3.

This ruling notes that ORA has broad powers of discovery. If ORA pursues this matter and finds that SBC has not contributed \$232,118,090 to its VEBA 1 trust (a possibility that this ruling considers to be remote), ORA should notify the assigned Administrative Law Judge and the assigned Commissioner.

**Issue 4: Withdrawal of PBOP Trust Funds After 1999**

OP 3.iii of D.04-02-063 requires SBC to disclose whether, and to what extent, SBC withdrew funds from its PBOP trusts in 2000 and subsequent years for non-PBOP purposes. SBC's compliance filing identifies one such withdrawal, i.e., \$24.993 million that SBC withdrew from its VEBA 1 trust in December 2000. SBC says that it returned \$24.993 million to the VEBA 1 trust on March 25, 2004.

ORA states that SBC has not definitively declared whether there were other withdrawals from PBOP trust funds for non-PBOP purposes. ORA recommends that SBC be required to provide confirmation that there were no other withdrawals. SBC responds that it has met the requirements of OP 3.iii and that it should not be required to provide additional confirmation.

This ruling agrees with ORA's recommendation. OP 3.iii requires SBC to disclose "[w]hether, and to what extent, [SBC] withdrew funds from its PBOP trusts in 2000 and subsequent years for non-PBOP purposes." SBC's compliance filing identifies one such withdrawal but does not definitively declare that there were no other withdrawals. To remove any doubt about SBC's compliance with OP 3.iii, this ruling will require SBC to submit a supplemental compliance report that states whether there were withdrawals from SBC's PBOP trust funds in 2000

and subsequent years that were used for non-PBOP purposes other than the one withdrawal identified in SBC's compliance report submitted on March 29, 2004.

**Issue 5: Amending the VEBA 1 Trust Agreement**

ORA recommends that SBC be required to amend the VEBA 1 trust agreement to "clearly terminate [SBC's] ability to divert trust assets for non-PBOP purposes in the future." SBC did not respond to ORA's recommendation.

This ruling declines to adopt ORA's recommendation. As stated earlier, the scope of this ruling is limited to whether SBC has complied with the requirements of D.04-02-063. ORA's recommendation goes beyond the requirements of D.04-02-063. Moreover, ORA's recommendation appears to be unnecessary in light of OP 6 of D.04-02-063, which states as follows:

6. [SBC] shall use PBOP trust fund assets, including assets returned to PBOP trust funds pursuant to this Order, for the sole purpose of providing PBOPs to [SBC's] retirees. Any PBOP trust fund assets not used for this purpose shall be returned to ratepayers to the extent allowed by law.

OP 6 prohibits SBC from using VEBA 1 trust assets (which is a PBOP trust fund) for any purpose other than providing PBOPs to SBC's retirees. SBC will be subject to fines and other sanctions if it violates OP 6. Thus, OP 6 achieves the objective of ORA's proposed amendment to the VEBA 1 trust agreement.

Therefore, **IT IS RULED** that:

1. The Office of Ratepayer Advocates' (ORA's) recommendations related to SBC California's (SBC's) compliance filing submitted on March 29, 2004, are adopted and rejected as set forth in the body of this ruling.
2. SBC shall file and serve by May 14, 2004, a supplemental compliance report that (i) identifies all interest contributed to the VEBA 1 trust in response to Decision 04-02-063, including any interest contributed in response to ORA's

comments summarized under the heading of Issue 1 in the body of this Ruling; and (ii) states if there were withdrawals from SBC's post-retirement benefits other than pensions (PBOP) trust funds in 2000 and subsequent years that were used for non-PBOP purposes other than the one withdrawal identified in SBC's compliance report submitted on March 29, 2004.

Dated May 3, 2004, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney  
Administrative Law Judge

## **CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding the Recommendations Made by the Office of Ratepayer Advocates in Its Comments on the Compliance Filing Submitted by SBC California in Response to Ordering Paragraphs 2, 3, and 5 of Decision 04-02-063 on all parties of record in this proceeding or their attorneys of record.

Dated May 3, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

## **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.